

AMENDED IN ASSEMBLY JANUARY 4, 2006

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 790**

**Introduced by Assembly Member Yee**

February 18, 2005

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~~An act to amend Sections 10150, 10151, and 10161.8 of, and to add Sections 10131.9 and 10131.91 to, the Business and Professions Code, relating to real estate, and making an appropriation therefor. An act to amend Section 10177 of the Business and Professions Code, relating to real estate licensees.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 790, as amended, Yee. Real estate licensees.

*Existing law, the Real Estate Law, provides for the licensing and regulation of real estate licensees by the Real Estate Commissioner, and makes a willful violation of the law a crime. Existing law authorizes the commissioner to suspend, revoke, or deny a license to a person who commits certain acts, including the willful use of specified terms, including "realtor," without authority to do so.*

*This bill would also prohibit a person from willfully using certain designations or certifications awarded by any organization of real estate licensees without authority to do so.*

*Because a willful violation of the bill would be a crime, it would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law, the Real Estate Law, provides for the licensing and regulation of real estate licensees by the Real Estate Commissioner. Existing law requires an application for a real estate broker license examination or a real estate salesperson license examination to be made in writing to the commissioner. Existing law requires a real estate broker to notify the commissioner in writing when the broker employs a real estate salesperson. Existing law makes a willful violation of the Real Estate Law a crime.~~

~~This bill would require a real estate broker to include in that notification to the commissioner a specification of the activities intended for the employed real estate salesperson. The bill would require an application for a real estate broker license examination or a real estate salesperson license examination to also include the specification of the activities intended for the respective licensees. The bill would require real estate brokers or salespersons that negotiate residential mortgage loans to notify the commissioner annually in writing, as specified, and to pay specified penalties if they fail to make the required notification to the commissioner. The bill would require those penalties to be deposited into the Recovery Account in the Real Estate Fund, which is continuously appropriated, and thereby would make an appropriation.~~

~~Because a willful violation of the bill would be a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. The Legislature finds and declares that the*
- 2 *public interest is served by protecting the validity and distinction*
- 3 *of private sector special practice designations against*
- 4 *unauthorized use, especially in the following areas:*

1 *(a) Real estate sales lease and exchange practice described in*  
 2 *subdivisions (a) and (c) of Section 10131 of the Business and*  
 3 *Professions Code.*

4 *(b) Mortgage finance practice described in subdivisions (d)*  
 5 *and (e) of Section 10131 of the Business and Professions Code.*

6 *(c) Real estate rental and management-related activities*  
 7 *described in subdivision (b) of Section 10131 of the Business and*  
 8 *Professions Code.*

9 *SEC. 2. Section 10177 of the Business and Professions Code*  
 10 *is amended to read:*

11 10177. The commissioner may suspend or revoke the license  
 12 of a real estate licensee, or may deny the issuance of a license to  
 13 an applicant, who has done any of the following, or may suspend  
 14 or revoke the license of a corporation, or deny the issuance of a  
 15 license to a corporation, if an officer, director, or person owning  
 16 or controlling 10 percent or more of the corporation's stock has  
 17 done any of the following:

18 (a) Procured, or attempted to procure, a real estate license or  
 19 license renewal, for himself or herself or any salesperson, by  
 20 fraud, misrepresentation, or deceit, or by making any material  
 21 misstatement of fact in an application for a real estate license,  
 22 license renewal, or reinstatement.

23 (b) Entered a plea of guilty or nolo contendere to, or been  
 24 found guilty of, or been convicted of, a felony or a crime  
 25 involving moral turpitude, and the time for appeal has elapsed or  
 26 the judgment of conviction has been affirmed on appeal,  
 27 irrespective of an order granting probation following that  
 28 conviction, suspending the imposition of sentence, or of a  
 29 subsequent order under Section 1203.4 of the Penal Code  
 30 allowing that licensee to withdraw his or her plea of guilty and to  
 31 enter a plea of not guilty, or dismissing the accusation or  
 32 information.

33 (c) Knowingly authorized, directed, connived at, or aided in  
 34 the publication, advertisement, distribution, or circulation of any  
 35 material false statement or representation concerning his or her  
 36 business, or any business opportunity or any land or subdivision  
 37 (as defined in Chapter 1 (commencing with Section 11000) of  
 38 Part 2) offered for sale.

39 (d) Willfully disregarded or violated the Real Estate Law (Part  
 40 1 (commencing with Section 10000)) or Chapter 1 (commencing

1 with Section 11000) of Part 2 or the rules and regulations of the  
2 commissioner for the administration and enforcement of the Real  
3 Estate Law and Chapter 1 (commencing with Section 11000) of  
4 Part 2.

5 (e) (1) Willfully used the term “realtor” or any trade name or  
6 insignia of membership in any real estate organization of which  
7 the licensee is not a member.

8 (2) *Willfully used or claimed without authority a designation or*  
9 *certification of special education, practice, or skill awarded by*  
10 *any organization of real estate licensees, or willfully held out to*  
11 *the public a confusingly similar designation or certification.*

12 (f) Acted or conducted himself or herself in a manner that  
13 would have warranted the denial of his or her application for a  
14 real estate license, or has either had a license denied or had a  
15 license issued by another agency of this state, another state, or  
16 the federal government revoked or suspended for acts that, if  
17 done by a real estate licensee, would be grounds for the  
18 suspension or revocation of a California real estate license, if the  
19 action of denial, revocation, or suspension by the other agency or  
20 entity was taken only after giving the licensee or applicant fair  
21 notice of the charges, an opportunity for a hearing, and other due  
22 process protections comparable to the Administrative Procedure  
23 Act (Chapter 3.5 (commencing with Section 11340), Chapter 4  
24 (commencing with Section 11370), and Chapter 5 (commencing  
25 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
26 Government Code), and only upon an express finding of a  
27 violation of law by the agency or entity.

28 (g) Demonstrated negligence or incompetence in performing  
29 any act for which he or she is required to hold a license.

30 (h) As a broker licensee, failed to exercise reasonable  
31 supervision over the activities of his or her salespersons, or, as  
32 the officer designated by a corporate broker licensee, failed to  
33 exercise reasonable supervision and control of the activities of  
34 the corporation for which a real estate license is required.

35 (i) Has used his or her employment by a governmental agency  
36 in a capacity giving access to records, other than public records,  
37 in a manner that violates the confidential nature of the records.

38 (j) Engaged in any other conduct, whether of the same or a  
39 different character than specified in this section, which  
40 constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in any order granting a restricted license.

(l) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry, or national origin.

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

*SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the*

1 *penalty for a crime or infraction, within the meaning of Section*  
2 *17556 of the Government Code, or changes the definition of a*  
3 *crime within the meaning of Section 6 of Article XIII B of the*  
4 *California Constitution.*

5 ~~SECTION 1. Section 10131.9 is added to the Business and~~  
6 ~~Professions Code, to read:~~

7 ~~10131.9. (a) A real estate broker or salesperson that acts~~  
8 ~~pursuant to subdivision (d) of Section 10131 shall notify the~~  
9 ~~commissioner annually in writing, on a form that is acceptable to~~  
10 ~~the commissioner, if the real estate broker or salesperson meets~~  
11 ~~any of the following:~~

12 ~~(1) The real estate broker or salesperson negotiates residential~~  
13 ~~mortgage loans to loan applicants for a residential mortgage loan~~  
14 ~~by using funds or making the commitment to advance funds from~~  
15 ~~a third party and not the broker's own funds as described in~~  
16 ~~Section 10131.8.~~

17 ~~(2) The real estate broker supervises other real estate brokers~~  
18 ~~or salespersons who negotiate residential mortgage loans to a~~  
19 ~~loan applicant for a residential mortgage loan by using funds or~~  
20 ~~making the commitment to advance funds from a third party and~~  
21 ~~not the broker's own funds as described in Section 10131.8.~~

22 ~~(b) A real estate broker or salesperson who is subject to~~  
23 ~~subdivision (a) and fails to notify the commissioner in writing~~  
24 ~~within 30 days after the date established by the commissioner~~  
25 ~~shall be assessed a penalty of five dollars (\$5) per day for each~~  
26 ~~additional day the notification has not been received. The~~  
27 ~~commissioner may waive these penalties subject to petition by~~  
28 ~~the real estate broker or salesperson. All penalties paid or~~  
29 ~~collected under this section shall be deposited in the Recovery~~  
30 ~~Account of the Real Estate Fund.~~

31 ~~SEC. 2. Section 10131.91 is added to the Business and~~  
32 ~~Professions Code, to read:~~

33 ~~10131.91. The commissioner shall track the intended~~  
34 ~~activities of real estate salesperson licensees and real estate~~  
35 ~~broker licensees pursuant to Section 10131.2, subdivision (d) of~~  
36 ~~Section 10150, subdivision (d) of Section 10151, and Section~~  
37 ~~10161.8. The information compiled shall be made available to~~  
38 ~~the public by the commissioner.~~

39 ~~SEC. 3. Section 10150 of the Business and Professions Code~~  
40 ~~is amended to read:~~

1     ~~10150. (a) Application for the real estate broker license~~  
2 ~~examination shall be made in writing to the commissioner. The~~  
3 ~~commissioner may prescribe the format and content of the broker~~  
4 ~~examination application. The application for the broker~~  
5 ~~examination shall be accompanied by the real estate broker~~  
6 ~~license examination fee.~~

7     ~~(b) Persons who have been notified by the commissioner that~~  
8 ~~they passed the real estate broker license examination may apply~~  
9 ~~for a real estate broker license. A person applying for the broker~~  
10 ~~examination may also apply for a real estate broker license.~~  
11 ~~However, a license shall not be issued until the applicant passes~~  
12 ~~the real estate broker license examination. If there is any change~~  
13 ~~to the information contained in a real estate broker license~~  
14 ~~application after the application has been submitted and before~~  
15 ~~the license has been issued, the commissioner may require the~~  
16 ~~applicant to submit a supplement to the application listing the~~  
17 ~~changed information.~~

18     ~~(c) Application for the real estate broker license shall be made~~  
19 ~~in writing to the commissioner. The commissioner may prescribe~~  
20 ~~the format and content of the broker license application. The~~  
21 ~~application for the real estate broker license shall be~~  
22 ~~accompanied by the appropriate fee.~~

23     ~~(d) Application for real estate broker license shall include a~~  
24 ~~required question of the real estate broker as to the specific~~  
25 ~~activities the broker intends to do under the license. Specification~~  
26 ~~of intended activities for the real estate broker pursuant to this~~  
27 ~~subdivision shall not limit the scope of activities allowed by law~~  
28 ~~under the real estate broker's license. The list of intended~~  
29 ~~activities shall be as follows:~~

30     ~~(1) A real estate broker, as described in subdivisions (a) and~~  
31 ~~(c) of Section 10131.~~

32     ~~(2) A mortgage broker, as described in subdivisions (d) and (e)~~  
33 ~~of Section 10131.~~

34     ~~(3) Other activities, as described in subdivision (b) of Section~~  
35 ~~10131.~~

36     ~~SEC. 4. Section 10151 of the Business and Professions Code~~  
37 ~~is amended to read:~~

38     ~~10151. (a) Application for the real estate salesperson license~~  
39 ~~examination shall be made in writing to the commissioner. The~~  
40 ~~commissioner may prescribe the format and content of the~~

~~1 salesperson examination application. The application for the  
2 salesperson examination shall be accompanied by the real estate  
3 salesperson license examination fee.~~

~~4 (b) Persons who have been notified by the commissioner that  
5 they passed the real estate salesperson license examination may  
6 apply for a real estate salesperson license. A person applying for  
7 the salesperson examination may also apply for a real estate  
8 salesperson license. However, a license shall not be issued until  
9 the applicant passes the real estate salesperson license  
10 examination. If there is any change to the information contained  
11 in a real estate salesperson license application after the  
12 application has been submitted and before the license has been  
13 issued, the commissioner may require the applicant to submit a  
14 supplement to the application listing the changed information.~~

~~15 (c) Application for the real estate salesperson license  
16 examination shall be made in writing to the commissioner. The  
17 commissioner may prescribe the format and content of the  
18 salesperson license application. The application for the real estate  
19 salesperson license shall be accompanied by the appropriate fee.~~

~~20 (d) Application for real estate salesperson license shall include  
21 a required question of the real estate salesperson as to the specific  
22 activities the salesperson intends to do under the license.  
23 Specification of intended activities for the real estate salesperson  
24 pursuant to this subdivision shall not limit the scope of activities  
25 allowed by law under the real estate salesperson's license. The  
26 list of intended activities shall be as follows:~~

~~27 (1) A real estate broker, as described in subdivision (a) and (c)  
28 of Section 10131.~~

~~29 (2) A mortgage broker, as described in subdivisions (d) and (c)  
30 of Section 10131.~~

~~31 (3) Other activities, as described in subdivision (b) of Section  
32 10131.~~

~~33 SEC. 5. Section 10161.8 of the Business and Professions  
34 Code is amended to read:~~

~~35 10161.8. (a) (1) Whenever a real estate salesperson enters  
36 the employ of a real estate broker, the broker shall immediately  
37 notify the commissioner thereof in writing.~~

~~38 (2) The notification required by paragraph (1) shall specify the  
39 activities intended for the employed real estate salesperson under  
40 one of the following categories:~~



1 ~~(A) A real estate broker, as described in subdivisions (a) and~~  
2 ~~(e) of Section 10131.~~

3 ~~(B) A mortgage broker, as described in subdivisions (d) or (e)~~  
4 ~~of Section 10131.~~

5 ~~(C) Other activities, as described in subdivision (b) of Section~~  
6 ~~10131.~~

7 ~~Specification of intended activities for an employed real estate~~  
8 ~~salesperson pursuant to this paragraph shall not limit the scope of~~  
9 ~~activities allowed by law under the real estate salesperson's~~  
10 ~~license.~~

11 ~~(b) Whenever employment of a real estate salesperson is~~  
12 ~~terminated, the broker shall immediately notify the commissioner~~  
13 ~~thereof in writing.~~

14 ~~(c) Whenever a licensee acquires a business address different~~  
15 ~~from the address shown on his or her license he or she shall mark~~  
16 ~~out the former address on the face of the license and type or write~~  
17 ~~the new main office address in ink on the reverse side, and date~~  
18 ~~and initial same.~~

19 ~~(d) Whenever a real estate salesperson enters the employ of a~~  
20 ~~new real estate broker the real estate salesperson shall mark out~~  
21 ~~the name of his or her former broker on the face of the license~~  
22 ~~and type or write the name of the new employing broker in ink~~  
23 ~~on the reverse side, and date and initial same.~~

24 ~~SEC. 6. No reimbursement is required by this act pursuant to~~  
25 ~~Section 6 of Article XIII B of the California Constitution because~~  
26 ~~the only costs that may be incurred by a local agency or school~~  
27 ~~district will be incurred because this act creates a new crime or~~  
28 ~~infraction, eliminates a crime or infraction, or changes the~~  
29 ~~penalty for a crime or infraction, within the meaning of Section~~  
30 ~~17556 of the Government Code, or changes the definition of a~~  
31 ~~crime within the meaning of Section 6 of Article XIII B of the~~  
32 ~~California Constitution.~~